

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Bail Appl..No. 4382 of 2007()

CC.1951/2002 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
CRIME NO.512/1999 OF CENTRAL POLICE
STATION, ERNAKULAM
.....

PETITIONERS/ACCUSED NOS.1, 3 TO 5

1. JOSEPH P.D., AGED 59, S/O.LATE DEVASSY,
PALLIPARAMBIL HOUSE, CEMETRY LANE,
PALARIVATTOM.
2. MANUEL P.D., AGED 53, S/O.LATE DEVASSY,
PALLIPARAMBIL HOUSE, SYRIAN CHURCH ROAD,
BROADWAY, ERNAKULAM.
3. VARUTHU @ VARGHESE, AGED 72,
S/O.LATE DEVASSY, PALLIPARAMBIL HOUSE,
SYRIAN CHURCH ROAD, BROADWAY, ERNAKULAM.
4. FRANCIS P.D., AGED 64, S/O.LATE DEVASSY,
PALLIPARAMBIL HOUSE, PUTHUVYPE.

BY ADV. SRI.S.NIRMAL KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY C.I
OF POLICE, CENTRAL POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.RAVEENDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.4382 of 2007

Dated this the 19th day of July 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations under Section 498A I.P.C. Consequent to non-appearance of the petitioners on a day when the case was posted for 313 examination, warrants of arrest have been issued against the petitioners.

2. According to the petitioners, they are absolutely innocent. Their omission to appear on that particular day was on account of reasons beyond their control. Date of posting was wrongly noted. In these circumstances, directions under Section 438 Cr.P.C may be issued in favour of the petitioners, it is submitted.

3. The decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] is authority for the proposition that powers under Section 438 Cr.P.C can be invoked by this court even in a case where the apprehended arrest is in execution of processes issued by courts after taking cognizance. This, I am satisfied, is a fit case where such a direction can be issued.

4. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C.:

i) Non-bailable warrant issued against the petitioners shall not be executed till 30/7/2007. On or before that date, the petitioner shall appear before the learned Magistrate and seek regular bail. Their application for bail shall be considered by the learned Magistrate on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007